

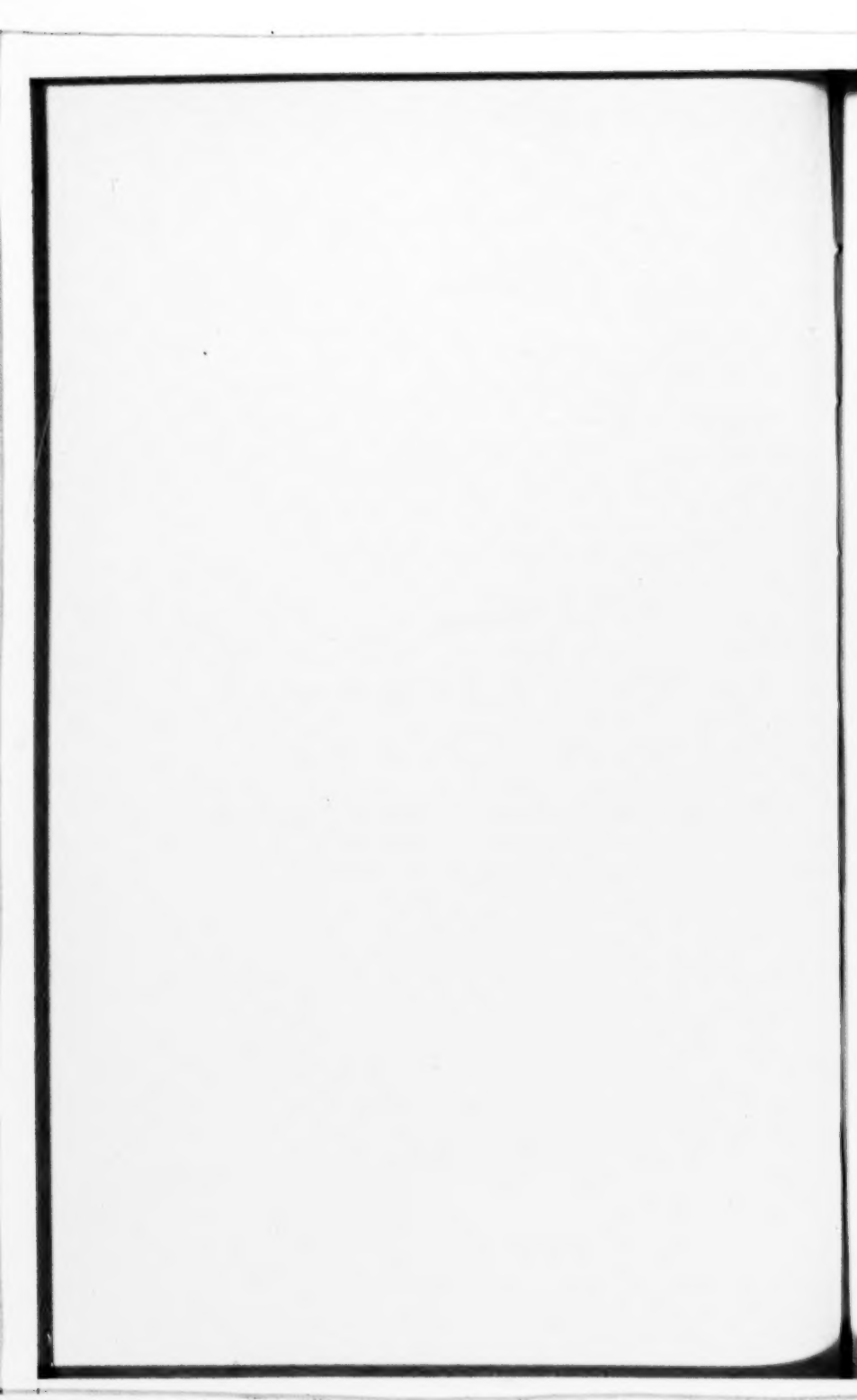
## INDEX.

	Page
I. Opinion below.....	1
II. Question presented.....	2
III. Statement .....	2
IV. Analysis of petitioners' grounds for certiorari....	4
V. Conclusion .....	5

## Citations.

### Cases:

In re Tinkoff, 85 F. 2d 305 (cert. den. 299 U. S. 611) .....	2, 3
Tinkoff v. Gold, 123 F. 2d 528 (cert. den. 316 U. S. 669) .....	2, 3, 4
Tinkoff v. Gold, 141 F. 2d 731 (mot. den. 323 U. S. 670) .....	3



No. 832.

IN THE  
**SUPREME COURT OF THE UNITED STATES.**

---

OCTOBER TERM, 1946.

---

In the Matter of ELLA H. TINKOFF, Debtor.  
ELLA H. TINKOFF, Debtor, and PAYSOFF TINKOFF, Claimant,  
Petitioners,

vs.

BEN GOLD, Trustee, LOUIS COHEN, Attorney for Trustee,  
MARTIN WARD, Referee in Bankruptcy, SHIPMAN,  
EAMON & MOYE, Court Reporters, DAVID STORAGE  
& MOVING COMPANY, Warehouseman, and  
ALBERT J. MENDELSSOHN, Auctioneer,  
Respondents.

---

On Petition for a Writ of Certiorari to the United States Circuit  
Court of Appeals for the Seventh Circuit.

---

**ANSWER**

Of David Storage & Moving Company and Albert J.  
Mendelssohn, Certain Respondents.

---

I.

**OPINION BELOW.**

The opinion of the Circuit Court of Appeals is reported  
at 156 F. 2d 405.

II.

**QUESTION PRESENTED.**

In our view the only issue was the propriety of the District Court, after the real property arrangement proceedings were dismissed, in ordering the costs of administration paid from the fund and the remaining balance remitted to the storage company, whence the fund was originally received, subject to any existing claims.

III.

**STATEMENT.**

What the court below so aptly described as "fog injected by Tinkoff" reappears in petitioners' brief. The Court is asked to investigate the gamut of ten years (or 85 pages) of the Tinkoffs' bankruptcy activities, beginning with 85 F. 2d 305 and ending with 156 F. 2d 405.

In May, 1937, Paysoff Tinkoff stored certain furniture and household possessions with the David Storage. Nothing was ever paid on the account, and more than three years later the storage company gave statutory notice of sale at public auction to be held July 15, 1940, pursuant to Illinois law for the satisfaction of lien. Tinkoff asked the Superior Court of Cook County to restrain the storage company. The injunction was denied on July 13, 1940 (see 123 F. 2d 528).

July 15, 1940, Mrs. Tinkoff filed a petition in the District Court for a real property arrangement of certain residential realty long since foreclosed, and procured *ex parte* a temporary order restraining the storage company from proceeding with its published sale. This order was vacated on July 17, 1940, and the sale allowed to proceed.

Pursuant to the order of vacation, the net proceeds of the sale, after the deduction of sale expenses, were remitted to the trustee in bankruptcy, subject to liens, to be held by him pending the outcome of the arrangement proceedings. The Tinkoffs sought an additional injunction to restrain the delivery of the chattels to the purchasers after the sale, but the petition was denied and the denial was affirmed in 123 F. 2d 528 (certiorari denied 316 U. S. 669, April 27, 1942).

In 1942, the real property arrangement proceedings were dismissed upon the petition of the storage company filed September 9, 1940. In 141 F. 2d 731 the Circuit Court of Appeals affirmed the dismissal on the ground that the Tinkoffs had no equity whatsoever in the realty. On October 9, 1944, the Tinkoffs' motion to set aside this Court's order denying additional time within which to file a petition for a writ of certiorari was denied (323 U. S. 670).

In May, 1945, the District Court charged the fees of the referee, court reporter, trustee and his attorney against the fund in the trustee's possession and ordered the balance of the fund remitted to the storage company, subject to the claims of any parties. This order was affirmed by the court below. The present petition for certiorari should seek a review of that order only, but petitioners also want a review of 123 F. 2d 528; 141 F. 2d 731, and apparently even 85 F. 2d 305, from which this Court denied certiorari on January 4, 1937 (299 U. S. 611).

IV.

**ANALYSIS OF PETITIONERS' GROUNDS  
FOR CERTIORARI.**

Petitioners, on pages 2, 3 and 4 of their brief, set forth their grounds for certiorari which shall be commented upon briefly:

1. The Circuit Court of Appeals ably distinguished the case at bar from its previous opinions. Petitioners' suggestion that the court below reversed itself is incorrect. In any event, as was stated in the opinion, the "law of the case" controls.

2 and 3. The cases cited by petitioners, involving paramount jurisdiction of the bankruptcy court, have nothing to do with the question at bar, which concerns an order of distribution.

4. The Supreme Court of the United States has never, to our knowledge, said it is not the duty of the trustee in bankruptcy and his attorney to inform the trial court of its lack of jurisdiction.

5. The appointment of the trustee has been argued in the two previous appeals. Petitioners commenced, but never perfected, an appeal from the order of appointment.

6. With reference to the lien of the storage company, petitioners raised the identical issue in the petition for certiorari from 123 F. 2d 528, which was denied.

7. The really simple facts of this case herein recited by respondents have become distorted by petitioners' injection of collateral issues intended to subordinate the glaring weakness of petitioners' position from the very beginning—lack of bankruptcy jurisdiction. By engendering confusion, petitioners seek to create the impression some-

where along the line that they have been denied a substantial right. Their's is a definite technique of creating situations wherein they claim abuse. It is hard to conceive how petitioners have been deprived of any right to be heard, as they claim, after they have aggressively waged more than six years of litigation against respondents.

V.

**CONCLUSION.**

The decision of the Circuit Court of Appeals is in accordance with established principles of law. There is no conflict of decisions nor questions of general importance. It is therefore respectfully submitted that the petition should be denied.

ROBERT MACK DAVID,  
Attorney for David Storage & Moving  
Company and Albert J. Mendelssohn,  
Certain Respondents.

January, 1947.